* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA Nos. 1234/2006 with**
ITA Nos.,1231,1232 & 1236 of 2006

% Judgment reserved on: 28th February, 2007

Judgment delivered on: 09th March, 2007

COMMISSIONER OF INCOME TAX
Central
New Delhi ..... Appellant

Through: Mr.R.D.Jolly with
Ms.Sonia Mathur, Adv.

Vs.

M/S HINDUSTAN TIN WORKS LTD
488, Bartan Market,
Sadar Bazaar,
Delhi. ..... Respondent

Through: Mr.C.S.Aggarwal, Sr.Adv.
with Mr.Prakash Kumar, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

V.B. GUPTA, J.

By this common judgment, four appeals being ITA

Nos.1231, 1232, 1234 & 1236/2006 filed by the Revenue are being disposed of.

2. All these appeals arise out of the consolidated order dated 9th December, 2005 passed by the Income Tax Appellate Tribunal (hereinafter referred as Tribunal) in ITA No.6331/Del/1996 for the assessment year 1993-94, ITA No.5423/Del/1997 for the assessment year 1994-95, ITA No.5293/Del/2004 for the assessment year 1993-94 and ITA No.5058/Del/1998 for the assessment year 1995-96.

3. The brief facts are that the Assessee is engaged in the manufacturing and sale of tin containers. A search and seizure operation was carried out on 9/10th March, 1995 in the business premises of the Assessee. Certain documents were seized and amongst others there was daily production reports prepared on a printed proforma titled "daily production report in the Fabrication Department". As per the Assessee, these reports are prepared every day after every shift and it contained the actual number of containers manufactured. The Assessee was required to produce the stock register of its unit-II. The Assessing Officer found that the production recorded in the stock register was less

than the production shown in the production report for the months of November, 2002, February, 2003 & March, 2003. He also found that there was no record showing defective containers and that the containers produced were shown more according to the production report, whereas the number of containers produced recorded in the stock register was less in the subsequent period. It was also observed by the Assessing Officer that the claim of Assessee was not supported by the facts, since the Assessee was not able to prove it with evidence that the containers recorded as on a particular date in the stock register as compared to production report were compensated for on a subsequent date; that no record was maintained for goods recorded and not recorded in the stock register; so it was unverifiable as to the number of containers manufactured on a particular day, which were defective and as to whether they were recorded in the stock register at all. The Assessing Officer also observed that the work in progress was reflected in terms of Metric Tonnes, whereas the containers produced were reflected in terms of number. Accordingly, the Assessing Officer made the addition of

Rs.1,74,58,165/- on account of under statement production and sale of tin containers.

4. The Commissioner of Income Tax (Appeals) deleted the addition made by the Assessing Officer observing, inter alia, that such addition was mainly based on alleged difference in the production of containers, while there was no such difference.

5. The Tribunal agreed with the finding of the Commissioner of Income Tax (Appeals) and dismissed the appeal filed by the Revenue.

6. It has been argued by the learned counsel for the Revenue that addition was made on the basis of daily production report seized during the course of search containing details of containers actually produced by the Assessee in the specified period of three months, the details of which could not be reconciled with the production recorded in the stock register for the period November, 2002, February-March, 2003. Further, the work in progress was indicated in the records in terms of Metric Tonnes whereas, the production of containers was reflected in terms of numbers, did not support the

explanation tendered by the Assessee. The Assessee did not produce the production record for the remaining nine months despite repeated requirement conveyed by the Assessing Officer and as such Assessing Officer rightly invoked the provisions of Section 145(2) of the Act.

7. The Commissioner of Income Tax (Appeals) deleted the aforesaid addition observing, inter alia, that such addition was mainly based on the alleged differences in the production of containers, while in fact there was no such differences.

8. The Income Tax Appellate Tribunal agreed with the finding of Commissioner of Income Tax (Appeals) observing that:-

> "Before us, the learned DR has not been able to interpret the categories and detailed findings of fact recorded by the learned Commissioner(A). These findings have not been alleged to be erroneous, much less perverse. Admittedly, there is no evidence on record to show that there had been any unaccounted for sales of Tin Containers by the assessee. Rather, the assessee had provided all the requisite details regarding its production activity. Undisputedly, the production was meticulously routed through the assessee's daily production register. The entries therein were definitely co-relatable to the entries in the stock register, enabling an

> easy stock tally, if one was so required. However, the AO did not deem it fit to carry out the exercise of tallying the stock as per these entries in the two types of books. He merely went by the alleged difference, which was not at all there. Very many details with regard to opening stock of raw-material, purchases, issue for fabrication, balance, the various types of containers manufactured, along with the respective weights thereof, were duly furnished by the assessee. This copious evidence, was wrongly ignored by the AO, which was duly set right by the learned Commissioner(A). The learned Commissioner(A), on verifying the factual position, held, and rightly so, that there was no difference in the recording of the production of containers in the stock register and that the AO did not make out any case of unrecorded sale of containers by the assessee."

9. Since there are concurrent findings of the facts of the two authorities to this effect that there is no difference in the recording of the production of the containers in the stock register, we do not find any reason to differ with the finding of facts recorded by these authorities.

10. The above being the position, no fault can be found with the view taken by the Tribunal.

11. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act,

which is confined to entertaining only such appeal against the order which involves a substantial question of law.

12. Accordingly, the present appeals are, hereby, dismissed.

(V. B. GUPTA)
JUDGE

MARCH 09, 2007
bisht

(MADAN B. LOKUR)
JUDGE